

# **Closing Argument**

## **I. Importance of Closing Argument**

- A. Closing argument is the only opportunity to put your whole position together.
- B. Those who say that closing argument is of little significance because jurors decide on the basis of “facts” do not realize how the “facts” can be enhanced by inferences, interpretation, and put together so that different conclusions can be drawn from those of first impression.
- C. Closing argument is last and gives you the opportunity to spotlight your issues and arguments so that they dominate the thinking of the jury in the jury deliberation room.

## **II. Prerequisites to Planning the Closing Argument**

- A. For a closing argument to be effective, you must have adhered to your Trial Plan in all prior phases of the trial. All phases should have resulted in the gathering of material for the closing argument.
- B. This outline presupposes this material to be available.
- C. Hopefully, as you prepared for trial you wrote down in the Thought Notebook each time you thought of an argument or a way to effectively organize the argument or to work an argument into the case.

## **III. Necessity of Organizing the Closing Argument**

- A. Arguments made from your trial notes or without an outline are ineffective because:
  - 1. Facts are not organized around central issues.
  - 2. Facts do not fit together to strengthen each other in support of a common point

3. Points do not come up in the *order* that is most persuasive.
4. The significance of the facts is not apparent to the jury and comes across as “one-hundred facts strung together.”

#### **IV. Organization of Your Tentative Closing Argument**

A. Note: This is the tentative closing argument you made up before trial.

*Step 1*: Examine the issues, facts, and inferences in the Thought Notebook to arrive at blocks of argument covering major points.

*Step 2*: Take a separate sheet of yellow pad for each block of argument covering a major point and label it.

- a. The object is to organize by issues, and group together facts and argument to strengthen your side of the issues.

*Step 3*: Put facts, inferences and argument under the block of argument where it fits.

*Step 4*: Brainstorm to find the best organization of argument, most persuasive ways to word points and every way possible to give the argument its greatest possible impact.

*Step 5*: After the facts, inferences and arguments are placed on their appropriate sheets, use a second sheet to put these in their most persuasive order. The result is an outline for that point.

*Step 6*: The blocks of argument covering major points should be put in the most effective order resulting in the tentative outline for the delivery of the closing argument.

#### **V. Final Organization of Closing Argument**

- A. Re-examine the tentative outline to see if it is still sound in view of developments during the trial.

- B. Reduce the mass of trial notes with which you are dealing by going through and marking only those bits of evidence which are to be used in closing argument.
- C. Place those bits of evidence under the points where they logically belong.
- D. Familiarize yourself with the outline so that a glance now and then is all that is necessary during the argument itself.

## **VI. Points to Include**

- A. The charges are obviously the most serious.
- B. Admit to those things the jury is going to believe anyway. The purpose of admissions is to gain the confidence of the jury that you do not shotgun, but do have the one real issue.
- C. A statement that there is only one [or an appropriate number] issue and the evidence shows that [your side is true].
- D. A discussion of issue(s).
- E. Put the prosecutor on the spot by inviting him in his final rebuttal to deal with [here state your strongest point].
- F. Put the jury on the spot by telling them it won't do any good to decide one month or six months from now that maybe they made a mistake.
- G. *Final appeal* emphasizing the possible conviction of an innocent man.

## **VII. Strategy of Closing Argument**

- A. Choose one strong point, if possible, and give it great strength and emphasis, making it the central issue in the case.

- B. Try to have an approach in the closing argument which is unexpected by the prosecutor.
- C. If the approach is unexpected, the prosecutor will likely not be able to deal with it confidently and competently, causing the jury to wonder how good the prosecution's case was.
- D. Stick with your point of greatest emphasis. If you do so the prosecutor will likely find himself fighting you on your point.

## **VIII. Delivery**

- A. It is a speech so use speech techniques.
  - 1. Use all the devices and techniques available to make it effective.
  - 2. Do not be phony—it will almost surely lose the case for you.
  - 3. Do be natural—it is more credible and sounds more sincere.
  - 4. Do raise and lower your voice, speed up, slow down, pause, etc, to provide variety and persuasive power.
- B. Have intensity
  - 1. To just go through the motions conveys the idea the defendant is guilty and you are just doing your duty.
  - 2. Intensity conveys the idea that you are defending an innocent man.
  - 3. The importance of having intensity simply cannot be overemphasized.
- C. Some Bad Habits to Avoid
  - 1. Do not shout.

2. Do not bang on the podium.
3. Do not jab your finger or pen at the jury.
4. Do not lounge on the podium.
5. Do not jingle the change in your pocket.
6. Do not shuffle papers. Have them in order beforehand and leave them alone except for when necessary.
7. Do not distract. Any movement not contributing is distracting.

#### D. Speech Pitfalls

1. Do not be casual. Have intensity and a tempo which tells people you really care and have something to tell them.
2. Do not mention time, "I know you have been listening to this for four days . . ." invites the jury to be bored.
3. Do not just go through facts. Outline for the jury as you argue what your big points are and that "five important facts support this" so the jury understands the significance of the facts.
4. Do not keep circling back on a point. Do it right the first time. You not only insult the jury, but lose them because the argument drags. There may be one summary but make it short and to the point—no rehash.
5. Do not use fillers, such as, "and so forth," and "in this case," etc.
6. Do not wander aimlessly at the end. Know your ending ahead of time. Do your final appeal and sit down.

- E. Use emotion to an appropriate extent. Emotion affects the actions of people far more than facts. Furthermore, use emotion to end is on a high point.